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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the matter of:)	
)	
PETITION TO AMEND RULES 10 AND)	Supreme Court No. 21-_____
24.1, AND FORMS 1, 7, 8, AND 11 OF	)	(Expedited consideration and
THE ARIZONA RULES OF COURT	)	emergency adoption requested)
PROCEDURE FOR CIVIL TRAFFIC)	
AND CIVIL BOATING VIOLATIONS)	
_____)	

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, David K. Byers, Administrative Director, petitions this Court to approve the amendments to the Rules of Court Procedure for Civil Traffic and Civil Boating Violations (“Civil Traffic Rules”) in the attached Appendix. The proposed amendments would implement the changes to A.R.S. §§ 28-1601 and -1603 made by Senate Bill (SB) 1551 and House Bill (HB) 2143.

I. Purpose of the Proposed Rule Amendments

Senate Bill 1551 was signed on April 7, 2021, and HB 2143 was signed on May 7, 2021 which, among other things, corrects drafting errors in SB 1551. These bills remove a court’s authority to direct the Motor Vehicle Division to suspend a

defendant's driver license on a civil traffic violation for failure to pay, or failure to appear and pay by the scheduled court date. The bills also allow for waiver of civil penalties in certain circumstances. Proposed amendments to Civil Traffic Rules 10 and 24.1, and Civil Traffic Forms 1, 7, 8, and 11 reflect the changes necessary to comport with this legislation.

II. Contents of the Proposed Rules

Proposed rule amendments track legislation by removing verbiage from the rules and forms related to driver license suspensions and adding verbiage related to the waiver of monetary obligations. A summary of the proposed amendments is as follows:

Rule 10(b) is amended to remove verbiage indicating that a driver license suspension may result from a failure to appear.

Rule 24.1 is amended to add "waiver" to track the language of legislation related to the mitigation and waiver of civil penalties.

Form 1 is amended to remove verbiage indicating that the defendant's driver license could be suspended if a bond on appeal is not posted or a civil sanction is not timely paid.

Forms 7 and 8 are amended to remove verbiage relating to a driver license suspension if the request and declaration for a documentary hearing ("request and declaration") are not received by the hearing date. Proposed amendments also add

verbiage related to registration renewal holds and the initiation of collection proceedings if the request and declaration are not received by the hearing date.

Form 11, The Important Notice to Defendant (“Notice”), which is the reverse side of the Violator/Defendant Copy of the Arizona Traffic Ticket and Complaint (ATTC), is amended to modify verbiage relating to driver license suspensions resulting from failure to appear on a civil traffic violation.

It should be noted that SB 1551 and HB 2143 did not include a change to A.R.S. § 28-1557(B)(2). This statute requires a statement on the ATTC indicating that a person who fails to appear on a civil traffic violation will have his or her license or nonresident operating privileges suspended until the civil penalty is paid. The retention of this statutory provision was a drafting error that may be corrected in the next legislative session. However, this statutory provision directly contradicts the changes made by SB 1551 and HB 2143. Therefore, Petitioner recommends modifying the verbiage on the Notice to apply to out of state driver license suspensions so that the statement will be accurate. Petitioner also recommends adding advisements related to registration renewal holds and the initiation of collection proceedings upon failing to appear and pay by the scheduled court date. Proposed verbiage is contained in the attached Appendix.

III. Request for Expedited Consideration and Adoption

SB 1551 and HB 2143 will become effective in late September 2021. Implementation of SB 1551 and HB 2143 will require changes not only to the Civil Traffic Rules, but also to the Civil Traffic forms, which includes the ATTC used by law enforcement agencies across the state.

As permitted by Supreme Court Rule 28(h), Petitioner requests expedited consideration and adoption of the proposed amendments, with a comment period to follow, so they can be effective at the same time as the new legislation.

Respectfully submitted this 28th day of June, 2021.

By /s/David K. Byers
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Appendix

(Verbiage additions are underlined, and verbiage removals are ~~stricken~~.)

Rules of Court Procedure for Civil Traffic and Civil Boating Violations

Rule 10. Entry of Plea; Failure to Appear

(a) No change

(b) The defendant may deny responsibility by appearing in person or by notifying the court in writing. The defendant may, at the same time, tender the civil sanction listed in the court's deposit schedule for civil traffic violations ~~to insure that no driver's license suspension will result from failure to appear~~. Upon receipt of said notice, the court shall set the matter for hearing and notify the defendant, citing officer, and any counsel of the date, time, and place for the hearing.

(c) No change

Rule 24.1 Mitigation or Waiver

The court may mitigate or waive a monetary obligation imposed pursuant to Title 28, Chapters 3, 5, 7, and 9 in accordance with law.

Form 1. Defendant's Notice of Right to Appeal (Civil traffic)

[CAPTION]

STATE OF ARIZONA	)	No. _____
)	
	)	DEFENDANT'S NOTICE
vs.	)	OF RIGHT TO APPEAL
	)	(CIVIL TRAFFIC)
_____)	

A party may appeal a final order or final judgment entered in a civil traffic case. This notice explains your rights and responsibilities to file an appeal from such an order or judgment.

There are two separate stages to the appeal process. The first stage begins in this court; the second stage takes place in the county superior court. Remember, you must complete all steps at both stages, or you run the risk of having your appeal dismissed. This notice does not set forth all the rules on traffic appeals. To read them entirely, you may review the Arizona statutes and rules of traffic court procedure at the library. It is recommended that you keep a copy of all your documents and receipts during the appeal.

STAGE ONE—THE TRIAL COURT

(A) THE NOTICE OF APPEAL. To appeal, you must file a “Notice of Appeal” with the trial court clerk within 14 calendar days from the date of the final order or final judgment. If you do not file a “Notice of Appeal” within these 14 days, you lose the right to appeal.

(B) THE RECORD. On or before the 14-day deadline to appeal, you must also pay for a copy of the proceedings at the hearing. The copy may be a recording or a transcript. The clerk will explain which type of record is required. Payment must be in cash or other method explained by the clerk. If you cannot afford to pay for the record, ask the clerk for information about a waiver or extension (“deferral”) to make payment later. If you fail to pay for the record or transcript, your appeal may be dismissed. Additional copies of the hearing may be obtained for an additional charge.

(C) POSTING A BOND ON APPEAL TO STAY JUDGMENT. You cannot be forced to post a bond in order to exercise your right to appeal. However, the civil traffic judgment normally includes a sanction (monetary fine) and, for moving violations, points on your license. In some cases too, the court may have suspended your license or registration as part of its decision. These penalties are NOT stopped just because you have filed a timely notice of appeal! In order to stop these penalties

from being imposed while your appeal is pending, you must “post bond” with the trial court. The amount of the bond is the total amount of the sanction ordered by the court unless the trial court orders that the bond be reduced or waived. If you do not post bond to stay enforcement, then the order to pay is still in force and must be complied with. ~~IF YOU DO NOT POST BOND, AND YOU DO NOT TIMELY PAY ANY SANCTION, YOUR LICENSE COULD BE SUSPENDED WITHOUT FURTHER NOTICE.~~

(D) THE WRITTEN APPEAL MEMORANDUM. Within a few days after you have paid for the record to be prepared, the court will contact you to pick up your record. You will need the record for this next step—the “Appellate Memorandum.” The appellate memorandum is your written “brief” or explanation why the trial court ruling was legally wrong. Normally, the memorandum will refer to specific portions of the record of the hearing to point out where there was error by the court. (That is why a party who appeals pays for a copy of the record.) The memorandum should be typed or printed on letter-sized white paper, double spaced, and not exceed 15 pages in length, not counting any exhibits from your hearing you want to attach to the memorandum.

(E) FILING THE APPELLATE MEMORANDUM WITHIN 60 DAYS. The appellate memorandum must be filed with the court within 60 calendar days of the deadline to file the notice of appeal. You must file the original and 1 copy of the memorandum with the court. (The other side then has 30 days to file an “Appellee’s Memorandum.”)

(F) WAIT FOR FURTHER INSTRUCTIONS. Once the memorandum has been filed, you should await further instructions from the superior court as outlined in the next stage. To keep you informed, remember that the trial court must have your current mailing address at all times. Even if you hire an attorney, your address is still required for legal notifications.

STAGE TWO—THE SUPERIOR COURT

(G) PAYING THE SUPERIOR COURT FILING FEE. If you have completed all of the first stage, your case moves to superior court where an appeals judge will look at the case. About 60 days after you file your memorandum, you will receive a notice from the superior court. This notice will (1) assign a superior court case number to use in all further correspondence, and (2) instruct you to pay the superior court appeal filing fee. You must pay this filing fee or your appeal may be dismissed and your case sent back to the trial court. Again, if you cannot afford to pay the filing fee, contact the superior court clerk for information about a waiver or extension (“deferral”) to make payment later.

(H) SUPERIOR COURT ACTION ON THE APPEAL. If you have now completed all these steps, you will receive a ruling from the superior court. The superior court has the right to affirm the trial court, overrule the trial court, modify

some of the trial court decision, or, if record is not clear, order a new trial in the superior court. If the final outcome of your case is that the ruling stands, or if your appeal is dismissed for any other reason, remember that the court may apply any bond, deposit, or payments already made and that you may have to return to the trial court to be given other instructions in person.

Dated:_____ I acknowledge receipt of a copy of this Notice

Defendant

Form 7. Defendant's Request for a Documentary Hearing

{CAPTION}

STATE OF ARIZONA,)	
Plaintiff,	)	DEFENDANT'S REQUEST FOR
	)	A DOCUMENTARY HEARING
vs.	)	AND WAIVER OF RIGHTS
)	
	)	Case No.
Defendant.)	
)	

Defendant's name:

State in detail why attending a civil traffic hearing would be a substantial hardship. A substantial hardship is more than mere inconvenience. Examples of substantial hardship may include residing a considerable distance from the court or having a medical or physical condition that significantly impairs the ability to participate in a hearing.

If the Court grants my request and conducts a documentary hearing, I waive the following rights: to personally appear to present evidence; to review evidence before the hearing (Rule 13(b)); to compel production of any citing officer notes (Rule 13(c)); to testimony under oath (Rule 16(a)); to cross examine the State's witnesses (Rule 16(c)); to present rebuttal evidence Rule 19(d)); to present a closing argument Rule 19(e)); and to immediate delivery of written notice of appeal after the imposition of any civil sanction (Rule 25(a)).

I acknowledge that if the Court does not receive my declaration of the facts by the hearing date, a default judgment may be entered against me, a civil sanction may be imposed, the Department of Transportation may refuse to renew the registration of a vehicle of which I am the registered owner, and my case may be sent to collections ~~driving privileges may be suspended.~~

Dated: _____

Defendant's signature

Form 8. Defendant's Declaration for a Documentary Hearing

{CAPTION}

STATE OF ARIZONA,
Plaintiff,
vs.

) DEFENDANT'S DECLARATION
) AND WAIVER OF RIGHTS
) FOR A DOCUMENTARY
) HEARING

Defendant.

)
) Case No.
)
)

Declarant's name:

State the facts of the case in your own words. If you have any exhibits, explain their significance in the statement and attach. Please print clearly or attach a written statement.

Continued on ____ attached pages.

By having a documentary hearing, I waive the following rights: to personally appear to present evidence; to review evidence before the hearing (Rule 13(b)); to compel production of any citing officer notes (Rule 13(c)); to testimony under oath (Rule 16(a)); to cross examine the State's witnesses (Rule 16(c)); to present rebuttal evidence Rule 19(d)); to present a closing argument Rule 19(e)); and to immediate delivery of written notice of appeal after the imposition of any civil sanction (Rule 25(a)). I acknowledge that if the Court does not receive this declaration by the hearing date, a default judgment may be entered against me, a civil sanction may be imposed, the Department of Transportation may refuse to renew the registration of a vehicle of which I am the registered owner, and my case may be sent to collections ~~driving privileges may be suspended.~~

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Declarant's signature

Form 11. Arizona Traffic and Complaint (Important Notice to Defendant Only)

IMPORTANT NOTICE DEFENDANT

The other side of this page is a true copy of the offense described in the complaint that will be filed in the designated court or hearing office.

The offense for which you have been cited is an Administrative Violation, a Civil Traffic Violation, a Criminal Offense, a Criminal Traffic Offense, or a Petty Offense. To determine which notice(s) applies to you, look at the box(es) checked under “the defendant committed the following” on the reverse side of this notice.

If you are required to pay fines, penalties, fees or other financial obligations as a result of this citation and **you are unable to pay**, bring this to the attention of court staff or the judge as payment over time or other alternatives may be available. Do not ignore the citation and the responsibility to pay as this may result in additional penalties and costs to you. For more information contact the court or an attorney, or visit the following website: [insert the appropriate website].

By providing your cell phone number you are granting permission to receive texts and other communication regarding court dates, pending payments and other relevant information about your case. Normal text and SMS rates may apply. Please contact the court in which your case is filed should you desire to opt out of this service.

CIVIL TRAFFIC

If the Civil Traffic box is checked, notice is hereby given that if you fail to appear as directed in this complaint, a default judgment will be entered against you, a civil sanction will be imposed, the Department of Transportation may refuse to renew the registration of a vehicle of which you are the registered owner, and your case may be sent to collections ~~license will be suspended. Additionally, depending on the laws and policies of your home state, in some cases, your driver's license or nonresident operating privilege will remain be suspended until the civil sanction is paid and you satisfy Motor Vehicle Division requirements (A.R.S. 28-1557(B)(2)).~~

CRIMINAL OR PETTY OFFENSE

If the Criminal or Petty Offense box is checked, notice is hereby given that if you fail to appear in court as directed in this complaint, a warrant will be issued for your arrest (A.R.S. 13-3903(F)).

CRIMINAL TRAFFIC

If the Criminal Traffic box is checked, notice is hereby given that if you fail to appear as directed in this complaint on a criminal charge, a warrant could be issued for your arrest and your license will be suspended (A.R.S. 28-1557(B)(1)).

(The court, law enforcement agency or public body responsible for issuing the Arizona Traffic Ticket and Complaint may include any additional information considered necessary to the defendant regarding appearances, pleas, and payment of fines or civil sanctions.)

Reverse Side Violator/Defendant Copy